

## Scrutiny Management Committee

17 November 2008

Report of the Head of Civic, Democratic & Legal Services

## Review of the Council's Overview and Scrutiny Function

### Summary

1. This report sets out the findings to date of a project, undertaken by officers within the Democratic Services Team, to review the existing arrangements at City of York Council (CYC) for fulfilling the legislative requirements for facilitating Overview and Scrutiny within the council. The project has been given added impetus by the recent findings of the Audit Commission which identified aspects of Overview and Scrutiny at CYC as being capable of improvement. As a result, CMT identified reviewing the scrutiny structure as one of its single improvement priorities.
2. The report considers the existing arrangements at York in the light of recent research and experience from other authorities. The report seeks to highlight some key areas of variation and, having identified that there may be potential for improvement, goes on to present potential alternatives to the current scrutiny structure within City of York Council.
3. In light of the findings of the CPA inspection earlier this year and further to scrutiny being identified by CMT as a single improvement priority, Scrutiny Management Committee is asked to consider a revised structure, in order to simplify the existing arrangements by bringing them more in to line with other authorities and to make more effective use of the limited resources available.

### Background

4. The current legislative framework concerning Overview & Scrutiny was introduced alongside the introduction of new constitutional arrangements in 2001. The new legislation was accompanied by comprehensive guidance that set out the underlying purpose of Overview and of Scrutiny. The guidance also emphasised the distinct aspects of Overview and Scrutiny, that of developing and reviewing policy, (overview) and that of holding the Executive to Account (scrutiny) There is some crossover between these two elements and they may both occur in the context of any one scrutiny topic, but the general distinction between these two functions is helpful when analysing the sorts of structure required to support them. The following is an extract from the DTLR Guidance:-

*3.17 Overview and scrutiny committees should be a key mechanism for enabling councillors to represent the views of their constituents and other organisations to the Executive and local authority and hence to ensure that these views are taken into account in policy development.*

3.18 *These committees are the main way by which the executive is held to account in public for the discharge of the functions for which it is responsible. They should have important roles in reviewing the local authority's policies and other matters of more general local concern and making recommendations, either to full council or to the executive, on future policy options.*

5. Section 21 of the Local Government Act 2000 (LGA 2000), lays down the requirement that an authority's constitution \*must include at least one committee that is charged with the functions of Overview and Scrutiny within the authority and empowered to effectively undertake that role. Authority's are required to have regard to the Statutory Guidance issued by the Secretary of State<sup>1</sup>. The functions are set out at length in the legislation but are put more succinctly in the guidance as follows:-
  - Review or scrutinise decisions or action taken in respect of any functions which are the responsibility of the Executive; (call-in)
  - Make reports or recommendations to the local authority or the Executive in respect of any functions which are the responsibility of the Executive, (Overview);
  - Review or scrutinise decisions or action taken in respect of functions which are not the responsibility of the Executive;
  - Make reports or recommendations to the local authority or the Executive in respect of any functions which are not the responsibility of the Executive; and
  - Make reports or recommendations to the local authority or the executive in respect of matters which affect the local authority's area or its inhabitants.
6. The guidance on the establishment of Overview & Scrutiny committees includes the following:

'Overview and Scrutiny arrangements should be set out clearly in the executive arrangements as part of the constitution to ensure it is clear which committees are responsible for overseeing which functions and policy areas i.e. the remit and terms of reference of each committee.' (para 3.22).
7. It is arguable that there is scope for improvement in this regard as the present arrangements are somewhat convoluted and anecdotal evidence suggests that there may be confusion as to the roles of Executive Member Advisory Panels and Overview & Scrutiny Committees.
8. Other specific legislative requirement include the following:

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<sup>1</sup> DETR New Council Constitutions: Local Government Act 2000 Guidance to English Local Authorities.

- S.21(5) requires that any member of an Overview & Scrutiny committee is able to put any matter, within the remit of their committee, on to the agenda of a meeting of that committee.
  - S.21(9) provides that a member of the Executive of an authority may not be a member of an Overview & Scrutiny committee. This may preclude Executive Member Advisory Panels from undertaking functions of Overview and Scrutiny as they include members of the executive.
  - Overview & Scrutiny committees are subject to the political balance requirements under S.15 LG&H Act 1989.
9. Unlike other committees, Overview & Scrutiny committees have the statutory power to require members of the Executive and officers, to attend before them and to answer questions. There is an associated statutory duty on the Executive member or Officer, to comply with the request and to answer questions put. S.21(13) & (14).
  10. Regulations require the inclusion of church and school governor representatives on Overview & Scrutiny committees dealing with education functions. Subsequently these committees have been given limited powers in connection with the overview and scrutiny of health and social care bodies within their authority's area.
  11. New provisions under the Local Government and Public Involvement in Health Act 2007, currently awaiting enactment, are intended to strengthen overview and scrutiny arrangements in light of changes to executive arrangements which will extend the scope of executive powers. There will also be a new right for any member of the authority to require that an issue relating to a local government matter affecting their area, must be put on an agenda of the relevant Overview & Scrutiny committee. Additional powers will be available for the relevant committee to require information from certain partner public bodies.
  12. Provisions included in the Police & Justice Act 2006 will, when enacted, require that local authorities designate one of its Overview & Scrutiny committees to deal with issues relating to local crime and disorder.

### **Rationale for Review**

13. In the light of critical comments from the CPA inspection earlier this year about the effectiveness of scrutiny in City of York Council and of a perceived organisational malaise towards the function generally, it was recognised that the current scrutiny structures and processes would need to be reviewed and CMT itself identified reviewing scrutiny as a single improvement priority for the Council, led by the Chief Executive. CCfA was due to go live on 1st April 2008, but was put on hold due to the Flanagan Police Review, resulting in it existing in law but not in practice. Since then, there has been a shift in focus from 'Councillor' empowerment to 'Citizen', so until the Empowerment White Paper comes out, it will not be clear what direction the 'Call for Action' is going to take. The current view is that it is likely to be more akin to the original Home Office model which was based on the RESPECT agenda.
14. Reviewing scrutiny structures now also provides an opportunity to ensure that the scrutiny function is equipped to meet the challenges of the new Local Government

& Public Involvement in Health Act, with specific regard to enhanced opportunity to local authorities to engage the involvement of key partners/local service providers in the review process, and with regard also to the Councillor Call For Action (CCfA) provision.

15. In addition, it is timely to address the requirements of scrutinising the new CAA (formerly Local Area Agreement) and of any specifications emerging from the forthcoming White Paper on 'Empowering Communities', in terms of dealing with petitions through scrutiny and setting up joint authority reviews.

## **Consultation**

16. During the summer, a series of workshops were held for Members at which they explored the rationale behind scrutiny, received and commented upon information relating to current practices in CYC, scrutiny structures at other local authorities and some potential alternative options for York.
17. In total, 25 Members attended these workshops from across all parties and their views were sought on the current scrutiny structure in York and on the range of potential alternatives put forward for debate.
18. An earlier version of this report was presented to CMT prior to the workshop sessions, for information only, and it was then re-presented to CMT on 5 November to include the information gathered at the workshops. The collective views of all consultative groups will then be fed into the report going to Council on 27 November 2008.

## **Information Gathered**

19. The Department for Communities and Local Government, has recently completed a five-year evaluation of the new council constitutions and ethical framework. The project, called 'Evaluating Local Governance'(ELG), looked closely at the legislation and its effectiveness in relation to scrutiny and found evidence of improvements in scrutiny's organisation and activities, with 76% of scrutiny committees using scrutiny to explore innovative forms of service delivery. It was clear from the findings that many authorities had found it difficult to find the right balance between policy development and scrutiny and overview, and it was recognised that successfully bringing about policy change was an important measure of the effectiveness of scrutiny committees. There was also good evidence that scrutiny made a valid contribution to executive decision-making especially in relation to policy development and performance review (Stoker et al. 2004: 60).
20. The Centre for Public Scrutiny (CfPS) recently completed its fifth annual survey of overview and scrutiny in local government, providing the most comprehensive national picture available of useful trend information, charting the development of overview and scrutiny within the context of other changes to the work of local authorities. This included the passing of the Local Government and Public Involvement in Health Act 2007 and its consequent implications for those who conduct and support local democratic accountability. The response rate to the survey equalled that of 2006, in that 63% of all local authorities in England and Wales responded.

21. The survey found that variation in committee structures used for the overview and scrutiny function had remained relatively stable over the last three years:

| <b>Committee Structure</b>  | <b>2007</b> | <b>2006</b> | <b>2005</b> |
|---|-------------|-------------|-------------|
| Multiple overview and scrutiny committees ( <i>as in York</i> ) (need to check with CfES as to their methodology as I think that this category may refer to standing committees which is different to CYC arrangements) | 65%         | 54%         | 59%         |
| 1No. OSC that commissions time-limited panels   | 17%         | 12%         | 14%         |
| 1No. OSC that does all the work   | 7%          | 8%          | 7%          |
| 1 scrutiny committee and multiple overview committees   | 12%         | 8%          | 16%         |

22. This pattern of distribution was similar across a range of variables, including types of authority, constitutional model and political control.
23. The survey identified three model types used by Authorities to support overview and scrutiny. These were:

- **Committee Model** – where committee officers, who also support other political forums, such as the executive, provide support to the full council and so on.
- **Integrated Model** – where support is provided, on an ad-hoc basis, from a variety of sources, including committee services, officers within departments, and corporate policy officers
- **Specialist Model** – support is provided by a scrutiny support unit/team with dedicated officers, who only work to the overview and scrutiny function

24. The breakdown for Councils operating these model types are shown below:

| <b>Authority Type</b> | <b>Committee Model</b> | <b>Integrated Model</b> | <b>Specialist Model<br/>(<i>as in York</i>)</b> |
|-----------------------|------------------------|-------------------------|---|
| All Authorities       | 28%                    | 13%                     | 59%   |
| District/Borough      | 39%                    | 17%                     | 43%   |
| County                | 17%                    | 8%                      | 75%   |
| Unitary               | 23%                    | 9%                      | 68%   |
| Metropolitan          | 21%                    | 4%                      | 75%   |

25. The survey results showed a sharp increase in most councils using the specialist model and moving away from the integrated model. It also identified which department scrutiny officers or teams were located within, the most popular being within the Democratic Services department. The split was as follows:

| <b>Location of Scrutiny Support</b>       | <b>%</b> |
|---|----------|
| Democratic Services ( <i>as in York</i> ) | 49%      |
| Chief Executive's                         | 23%      |
| Policy & Performance                      | 14%      |

|                    |    |
|--------------------|----|
| Audit              | 2% |
| Corporate Services | 4% |
| Other              | 8% |

26. In order to compare the effectiveness of our current structure, comparative information was gathered and assessed on scrutiny structures in other local authorities of similar size, political management arrangements or others with unitary status, as well as those of good repute in the scrutiny field.
27. It was recognised therefore that the committee structure, model and location of scrutiny services in York already complied with the most commonly applied practices elsewhere. However paragraphs 28 – 39 below demonstrate that York has not to date adopted a scrutiny and decision making structure consistent with the practices of other local authorities, and furthermore York’s structure is not replicated anywhere else in the country.
28. Scrutiny Structures At Other Local Authorities  
Information on 10No. other local authorities was gathered and from those, 4 models were identified as worthy of consideration:

| <b>Council</b>               | <b>Political Management Arrangements</b>   | <b>Scrutiny Structure</b>  |
|------------------------------|--|--|
| Hull City                    | Unitary<br>Hung (Lib Dem)<br>59 Cllrs:<br>Lib Dem 30<br>Lab 20<br>Hull Ind 6<br>Con 2<br>Ind 1 | <ul style="list-style-type: none"> <li>• Overview &amp; Scrutiny Committee: ‘Call-in’ and final reports from 6No. Overview &amp; Scrutiny Commissions:</li> <li>• Corporate</li> <li>• Environment &amp; Transport</li> <li>• Financial Management &amp; Audit</li> <li>• Health &amp; Social Well-being</li> <li>• Housing, Neighbourhood Renewal &amp; Urban Regeneration</li> <li>• Lifelong Learning, Culture &amp; Leisure</li> </ul>   |
| Sheffield<br>(4* CPA rating) | Metropolitan Borough<br>Hung<br>84 Cllrs:<br>Lab 41<br>Lib Dem 39<br>Green 2<br>Con 1<br>Ind 1 | <ul style="list-style-type: none"> <li>• Scrutiny Management Board: co-ordinates and manages the overall scrutiny programme, and decides how to deal with urgent new topics or those which fall within the remit of more than one scrutiny body (made up of Chairs &amp; Vice-Chairs of Scrutiny Boards)</li> <li>• 5No. Scrutiny Boards can hold enquiries and investigate the available options for future direction in policy development: <ul style="list-style-type: none"> <li>* Children &amp; Young People</li> <li>* Culture, Economy &amp; Sustainability</li> <li>* Health &amp; Community Care</li> <li>* Strategic Resources &amp; Performance</li> <li>* Successful Neighbourhoods</li> </ul> </li> <li>• Based on the subject, cabinet decisions which are called-in are dealt with by the relevant Scrutiny Board</li> </ul> |

|                |   |   |
|----------------|---|---|
|                |   | In December '07 awarded maximum rating of 4 for CPA   |
| Leicester City | Unitary Majority Administration<br>54 Cllrs:<br>Lab 38<br>Con 8<br>Lib Dem 6<br>Green 2                   | <ul style="list-style-type: none"> <li>• Overview &amp; Scrutiny Management Board: oversees scrutiny process and directly scrutinises policy or service changes. Decides on issues for Task Groups.</li> <li>• Performance &amp; Value for Money Select Committee: scrutinises performance delivery within the Council and its partners. Includes monitoring efficiency, scrutinising the annual budget setting and identifying areas for more in-depth work for the Task Groups to investigate.</li> <li>• Health Overview &amp; Scrutiny Committee</li> <li>• 4No. Ad Hoc Task Groups - meet when necessary to investigate issues in-depth, as directed by the Overview &amp; Scrutiny Management Board and the Performance &amp; Value for Money Select Committee: <ul style="list-style-type: none"> <li>* Adult &amp; Housing Task Group</li> <li>* Culture &amp; Leisure Task Group</li> <li>* Community Cohesion &amp; Community Safety Task Group</li> <li>* Children, Schools &amp; Young People Task Group</li> </ul> </li> </ul> |
| Peterborough   | Unitary Majority Administration<br>57 Cllrs:<br>Con 43<br>Peterborough Ind. Forum 9<br>Lib Dem 3<br>Lab 2 | <ul style="list-style-type: none"> <li>• 1No. Scrutiny Committee – oversees and co-ordinates scrutiny function and allocates responsibility for issues which fall between one or more scrutiny panel</li> <li>• 5No. Scrutiny Panels (query whether these are standing panels or ad-hoc?): <ul style="list-style-type: none"> <li>* Health &amp; Adult Social Care</li> <li>* Business Efficiency</li> <li>* Children &amp; Lifelong Learning</li> <li>* Community Development</li> <li>* Environment &amp; Community Safety</li> </ul> </li> </ul> <p>Each of the above manages its own work programme and reports directly to the Cabinet<br/>The Scrutiny Panels can create Scrutiny Review Groups to carry out specific reviews.<br/>(Query whether the chairs of the Scrutiny committee or the panels may be from the party forming the executive)</p>   |

29. Each of these was looked at in detail and the delegated powers for the various committees listed above are detailed in Annex A.

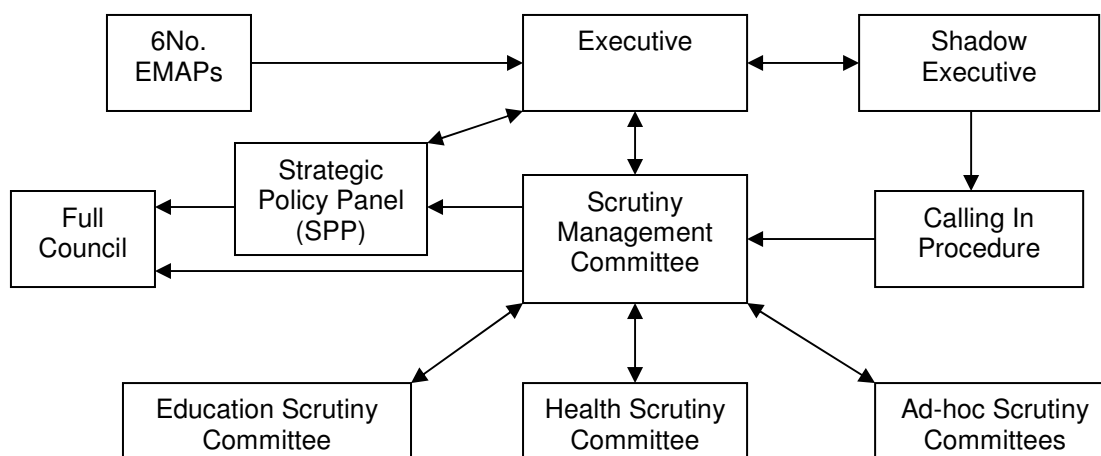
## Analysis

30. In relation to the functions set out in their terms of reference, each of the above four council scrutiny structures have designated the same powers to their scrutiny committees, in line with legislation i.e.:
- To assist the Council and the Cabinet in the development of its budget and policy framework by in-depth analysis of policy issues
  - To question members of the Cabinet and other Bodies, and chief officers about their views on issues and proposals affecting the area
  - To review and scrutinise the decisions made by and performance of the Cabinet and, as appropriate, the Regulatory Boards and Council officers both in relation to individual decisions and over time
  - To question members of the Cabinet and other Bodies, and chief officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects
  - To review and scrutinise the performance of the Council in relation to its policy objectives, and monitoring finance and performance targets and/or particular service areas
31. In regard to consultation and the scrutiny of public bodies they can:
- conduct research, community and other consultation in the analysis of policy issues and possible options
  - consider and implement mechanisms to encourage and enhance community participation in the development of policy options
  - liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working
  - review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Scrutiny Board and local people about their activities and performance
  - question and gather evidence from any person, with their consent
32. Finally, each of their Scrutiny Committees is responsible for:
- exercising the right to call-in for reconsideration, decisions made but not yet implemented by the Cabinet in relation to their own specific areas of work (with the exception of Peterborough City Council, where only the Scrutiny Committee can exercise the right to call-in).
  - exercising overall responsibility for the finances made available to them
  - exercising overall responsibility for the work programme of any Officers specifically employed to support their work
  - reporting annually to the full Council on their workings and agree future work programmes and amended working methods if appropriate
33. Existing Scrutiny Arrangements In York  
Currently, the two distinct elements of Overview & of Scrutiny i.e policy development and review, and holding the Executive to account, are currently being undertaken in a number of places:



|                     |  |
|---------------------|--|
| Scrutiny            | Strategic Policy panel (SPP)<br>Shadow Executive   |
| Overview            | 6No. EMAPs   |
| Overview & Scrutiny | Scrutiny Management Committee (SMC) inc Call-In<br>Education Scrutiny Committee<br>Health Scrutiny Committee<br>Ad-hoc Scrutiny Committees |

34. The diagram below shows the current committees involved in the scrutiny function and the flow of business:



35. Scrutiny call-in is restricted to SMC but in addition, under the CYC constitution, SPP has a duplicate call-in power which can be exercised at the request of any Group Leader whose group holds at least ten per cent of the seats.

### Analysis

36. A significant level of support is required, both in terms of officer and administrative resource, and members' time involved in preparing for and attending these meeting, as a result of the number of committees undertaking the O&S functions within the Council. Given the limited resources available to support the function there may be an argument to be made for more targeted use of this resource.
37. One significant difference between the current arrangements in York and other local Authorities is that in York both the setting and spending of budgets and the monitoring of finance and performance is carried out by the EMAPs. Whereas elsewhere the monitoring of finance and performance is a function of scrutiny
38. In York some overview and policy development work is undertaken at EMAPs (as evidenced in Annex B), which undermines good scrutiny practice as recommended by DTLR. Furthermore, due to the way that EMAPs currently operate, it is often not publicly clear at meetings who the executive member is and who is responsible for making the decision.

39. Workshop Findings

At the workshops held for Members, a range of views were expressed on our current structure but it is fair to say in summary that there was a general perception across all parties as follows:

- there is confusion about the status of scrutiny within the organisation and the role it plays, as a result of a combination of the following:
  - a. inadequate structural arrangements
  - b. lack of officer/Member engagement and commitment
  - c. political interference
  - d. lack of officer/Member resources
- that EMAPS were undoubtedly informative but debatably time consuming and resource intensive both in Members and officers time and also in relation to the volume of paper produced and circulated. Some backbench Members questioned:
  - i. whether attending EMAPs was a valuable use of their time on the basis that Executive Members were in any event constitutionally empowered to make the decision;
  - ii. information provided in many reports submitted to EMAP could be done so in other ways to enable them to feed in their views, if necessary

39. In addition, there was some general consensus from those Members attending, on the following points:

- A clearer definition needed to be established between EMAPS and scrutiny generally
- What EMAP could do should be more tightly defined
- Officer/Member commitment to and engagement with scrutiny needed improving
- Preserving the transparency of executive Member decisions being taken in public or published to the same standards applied now.

40. Possible Alternative Structures For York

Having recognised that there are a number of issues around the current scrutiny structure in York, Members at the workshop were presented with a series of alternative options. These were:

| <u>Option</u> | <u>Proposal</u>  |
|---------------|--|
| A             | Remove existing Scrutiny Committees from structure and give authority to each of the Executive Member Advisory Panels (EMAPs) to carry out all of the scrutiny function in relation to the services under their individual portfolio areas |
| B             | Replace the existing Scrutiny Committees with an increased No. of alternative Scrutiny Committees, and <u>remove</u> EMAPs from the decision making structure  |
| C             | Replace the existing Scrutiny Committees with an increased No. of alternative Scrutiny Committees, and <u>retain</u> EMAPs – clearly define EMAPs to ensure they do not undermine the scrutiny function.                                   |

Executive Member decisions would continue to be recorded at EMAPs

- D Make no change to the scrutiny committees and decision making structure, but clearly define the role of EMAPs to ensure they do not undermine the scrutiny function and allow for policy development work (currently considered by EMAPs in part) to be considered by SMC instead, in line with Section 21 of the Local Government Act 2000. Executive Member decisions would continue to be recorded at EMAPs.

## **Analysis**

41. A detailed analysis of the advantages and disadvantages, and effects of each option is attached at Annex B.
42. It should be noted that the legislative requirements of the Local Government & Public Involvement in Health Act, including CCfA provision and scrutinising LAAs, can be met by any of the above options. If a decision is taken not to adopt any of the above options, some changes to the current scrutiny function would still be required in order to enable scrutiny of the LAA.
43. In addition, options A-C propose the removal of SPP to enable all Call-In matters (either pre or post decision) to be dealt with through SMC, in line with recognised common practice elsewhere. These options are also robust enough to facilitate any other forthcoming legislative changes e.g. Communities in Control.
44. When asked for their views on the particular alternative options outlined at the workshops, a clear majority of the Members expressed a preference for a model based on establishing multiple standing scrutiny committees, with the consequential removal of EMAPs i.e. Option B.

## **Options**

45. Having considered the information within the report and its annexes, the options are to:
  - make changes to the scrutiny and decision making structure, in line with either option A, B, C or D as outlined in Annex B.
  - retain the current decision making structure but ensure essential changes are introduced to meet or respond to existing or forthcoming legislative requirements, as set out in paragraphs 7-9 above.

## **Corporate Direction & Priorities**

46. The recommendations presented in this report to improve the effectiveness of the scrutiny function in York are in line with our values to 'Deliver what our customers want' and to encourage improvement in everything we do'. They are also in line with a number of our direction statements:

- We will listen to communities and ensure that people have a greater say in deciding local priorities
  - We will be outward looking Council, working across boundaries for the people of York
  - We will promote cohesive and inclusive communities
47. Also, the ongoing work of our individual scrutiny committees supports our priorities for improvements.

## **Implications**

48. **Financial** - Associated costings on the applicable alternative options as a comparison to the current costs of running scrutiny in City of York Council are attached at Annex C. **Please note these are indicative only.**
49. **Human Resources (HR)** There are no HR implications associated with the recommendations within this report, but it is recognised that there are likely to be some when and if any required changes to the decision making structure are agreed. For example, an increased number of scrutiny committees might require additional scrutiny support staff or at least a re-allocation of resources from within Democratic Services.
50. **Legal** - The legal implications associated with this report are as set out in paragraphs 4-12.
51. There are no Equalities, Crime and Disorder, IT or other implications associated with the recommendations within this report

## **Risk Management**

52. The risk associated with not changing the scrutiny function in York is that our CPA rating is likely to remain static in the future. If the wrong approach is taken to changing the scrutiny function in York then the perception may remain that it is ineffective and therefore our CPA rating could still be affected. Equally, no changes to the scrutiny structure might result in the Council failing to respond appropriately to the legislative requirements referred to in paragraphs 7-9 above.

## **Recommendations**

53. Scrutiny Management Committee are asked to note the various alternative structures and options outlined in the report and provide comments.

Reason: To inform the planned report to Council.

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**Report Approved**  **Date** 24 October 2008

**Implications:**

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**Wards Affected:**

**All**

**For further information please contact the author of the report**

**Background Papers:**

- Final Report from the Department for Communities and Local Government - 'Evaluating Local Governance'(ELG) project
- CfPS 2007 Survey of Overview & Scrutiny in Local Government

**Annexes:**

**Annex A** – Detailed Examples of Scrutiny Committees at Other Councils  
**Annex B** – Suggested Alternative Decision Making Structures For York  
**Annex C** – Costings for Alternative Structures  
**Annex D** – Suggested Scrutiny Committee Individual Terms of Reference